

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

2000 Biennial Regulatory Review

**Policy and Rules Concerning the
International, Interexchange Marketplace**

IB Docket No. 00-202

To: The Commission

COMMENTS OF BT NORTH AMERICA INC.

BT North America Inc. (“BTNA”) hereby submits these comments in response to the Commission’s International Detariffing NPRM.¹ BTNA supports the Commission’s proposal to detariff the international services of non-dominant, interexchange carriers, including U.S. carriers classified as dominant due to foreign affiliations because: (i) forbearance from international detariffing meets the statutory criteria for forbearance under Section 10(a) of the Communications Act of 1934, as amended (“Act”);² and (ii) forbearance will lighten the regulatory burdens on telecommunications carriers thereby allowing carriers to compete more effectively in the market for international telecommunications services.

ARGUMENT

BTNA is a Delaware corporation and a wholly owned indirect subsidiary of British Telecommunications plc (“BT plc”). BTNA is authorized by the Commission to provide international telecommunications services and has been providing such services from the United States since 1994.

¹ In the Matter of 2000 Biennial Regulatory Review; Policy and Rules Concerning the International Interexchange Marketplace, Notice of Proposed Rulemaking, FCC 00-367, IB Dkt. No. 00-202 (rel. Oct. 18, 2000) (“International Detariffing NPRM”).

² 47 U.S.C. § 160(a).

The Commission should forbear from requiring non-dominant interexchange carriers, including a carrier like BTNA that is deemed dominant on the U.S.-U.K. route because of its affiliation with BT plc, from filing tariffs for international interexchange telecommunications services³ because Section 10(a) requires the Commission to forbear from requiring such filings. Pursuant to Section 10(a), international detariffing is required because:

- (1) enforcement of the international tariffing requirement is not necessary to ensure that charges, practices, classifications or regulations for international telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
- (2) enforcement of the international tariffing requirement is not necessary for the protection of consumers; and
- (3) forbearance from applying the international tariffing requirement is consistent with the public interest.⁴

³ The requirement to file tariffs for international interexchange telecommunications service arises under 47 U.S.C. § 208.

⁴ Section 10(a) states:

Notwithstanding section 332(c)(1)(a) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that –

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

Section 10(b) goes on to state that:

In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

47 U.S.C. §§ 160(a)&(b).

I. International Tariffing Is Not Necessary To Ensure Just And Reasonable Charges, Practices, Classifications Or Regulations For International Telecommunications Service Nor Is It Necessary To Prevent Unjust And Unreasonable Discrimination

Filed tariffs for international interexchange telecommunications services are no longer necessary to ensure that carriers' charges, practices, classifications or regulations are just and reasonable and do not discriminate unjustly or unreasonably. The reality is as the Commission has stated in its International Detariffing NPRM⁵ – the rates for international telecommunications services from the United States are lower than ever before because of: (i) increased competition in the U.S to provide international interexchange telecommunications services; (ii) the Commission's accounting rate and international settlement policies; and (iii) the market opening commitments made by countries in the WTO Basic Telecom Agreement.⁶ These mechanisms and the Commission's reliance on the complaint mechanism in the Act⁷ have ensured just and reasonable charges, practices, classifications and regulations and addressed unjust and unreasonable discrimination by carriers.

II. International Detariffing Is Not Necessary To Protect Consumers

The current system of filing international tariffs with the Commission and its contractor in Washington D.C. is unnecessary to protect consumers. The majority of consumers in the United States who live outside the Washington D.C. area cannot access this information to make meaningful comparisons of carriers' rates and services. However, by requiring carriers that have websites to post online and on a timely basis information regarding rates, terms and conditions for international interexchange services, the Commission will ensure more widespread, genuine

⁵ International Detariffing NPRM at ¶¶ 7-12.

⁶ The commitments made by countries pursuant to the World Trade Organization's basic telecommunications services negotiations are contained in the Fourth Protocol to the General Agreement on Trade in Services (GATS), April 30, 1996, 36 I.L.M. 366 (1997). These commitments, as well as the basic obligations contained in the GATS, are referred to in this comment as the "WTO Basic Telecom Agreement."

⁷ 47 U.S.C. § 208.

access to information about carriers' international services than consumers have ever had. This will allow consumers to comparison shop more effectively for international services and to detect more easily when carriers' posted rates do not correspond with rates that carriers are billing consumers. Given that the Commission relies on market mechanisms and its international accounting and settlements policies to move international rates towards competitive levels, and that online posting of international service information will give consumers more meaningful access to carriers' rate and service information, retaining a tariff filing requirement for international interexchange services would be redundant and unnecessary to protect consumers.

III. Forbearance From International Detariffing Is Consistent With The Public Interest

Forbearance from applying Section 203's international tariffing requirement is in the public interest because forbearance will allow a carrier to respond more quickly and efficiently to a customer's demand for services. The delay and layer of complexity added when a carrier's staff must draft a tariff filing and gain approvals of the draft filing from various divisions within the carrier and the customer to ensure that the terms within accurately reflect the terms to which the customer and carrier have agreed will be removed by the Commission's international detariffing proposals. Carriers will be able to respond more quickly to consumers' demands. Carriers also will be relieved of the added administrative and filing costs associated with the current tariffing regime. In addition, as discussed earlier, easy and ubiquitous online access to information about carriers' international rates and services will better permit consumers to choose plans better suited to their needs. Consumers will be able to detect discrimination more easily if they can readily compare information available on carriers' websites. In addition, competition among carriers for consumers will force carriers to post online information about their rates, terms and conditions of service in a more user-friendly format than is currently used

in tariff filings, which are dense, legalistic, and difficult to understand. For these reasons forbearance from international tariffing requirements is consistent with the public interest.

IV. The Commission Should Not Require Facilities-Based Carriers Whose Foreign Affiliates Have Market Power To File International Tariffs

BTNA also supports the Commission's proposal not to require facilities-based carriers whose foreign affiliates have market power to file tariffs for the purpose of detecting price squeeze behavior on affiliated routes.⁸ Instead the Commission proposes to require carriers to maintain price and service information, including documentation supporting a carrier's rates, terms and conditions of international service, and to require carriers to produce such information within ten days of a Commission request. By implementing these proposals, the Commission will lose none of its ability to detect and deal with price squeeze behavior. At the same time, by not requiring facilities-based carriers whose foreign affiliates have market power to file tariffs, the Commission will not place such carriers at a competitive disadvantage thereby potentially diminishing competition in the international telecommunications services market.

Moreover, the Commission often receives information about a carrier's anti-competitive behavior from other carriers. In this intensely competitive international telecommunications services market, which is about to become even more competitive following the entry of large sophisticated carriers like the Regional Bell Operating Companies into the market, it is hard to imagine that the potential to discover price squeeze behavior would be diminished somehow by requiring carriers whose foreign affiliates have market power to post rate and service information online instead of filing such information with the Commission.

⁸ International Detariffing NPRM at ¶¶ 27-28.

V. Transition Issues

If the Commission adopts its proposals in the International Detariffing NPRM and decides not to require non-dominant carriers to file tariffs for their international interexchange telecommunications services, the Commission should synchronize its rules for domestic and international detariffing and implementation of these rules so as to minimize customer confusion and ensure a smooth transition to a detariffed regime for domestic and international interexchange telecommunications services.

CONCLUSION

For the foregoing reasons, BTNA urges the Commission to adopt the proposals stated in its International Detariffing NPRM and detariff the international services of non-dominant, interexchange carriers, including U.S. carriers classified as dominant due to foreign affiliations.

Respectfully submitted,



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